

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Tennessee Gas Pipeline Company

Docket Nos. RP06-297-001
RP04-215-003

v.

Columbia Gulf Transmission Company

ORDER DENYING REHEARING

(Issued November 1, 2006)

1. On March 12, 2004, Tennessee Gas Pipeline Company (Tennessee) filed a complaint against Columbia Gulf Transmission Company (Columbia Gulf) in Docket No. RP04-215-000 following Columbia Gulf's denial of Tennessee's request for an interconnection at Egan, Louisiana, on the Blue Water Project (BWP), jointly operated by both parties. On May 6, 2004, the Commission established a hearing to examine the issues raised in the complaint.¹ After hearing, an Initial Decision of an Administrative Law Judge (ALJ) was issued, finding that Columbia Gulf's denial of the requested receipt point violated Commission policy.²
2. On review of the Initial Decision, the Commission directed Columbia Gulf "to allow the construction and operation of the receipt point requested at Egan, Louisiana, by Tennessee, as soon as operationally possible."³ On November 22, 2005, we denied

¹ *Tennessee Gas Pipeline Company v. Columbia Gulf Transmission Company*, 107 FERC ¶ 61,121 (2004).

² *Tennessee Gas Pipeline Company v. Columbia Gulf Transmission Company*, 110 FERC ¶ 63,041 (2005) (Initial Decision).

³ *See Tennessee Gas Pipeline Company v. Columbia Gulf Transmission Company*, 112 FERC ¶ 61,118 at 61,741 (2005) (July 25 Order).

Columbia Gulf's request for rehearing and stay and issued a clarification.⁴ No party sought any further rehearing, clarification, or reconsideration of the November 22 Order or petitioned for court review under the Natural Gas Act.

3. The new interconnection was not promptly constructed. On March 31, 2006, Tennessee filed a Petition for Declaratory Order,⁵ requesting the Commission to direct Columbia Gulf to allow the interconnection approved by the Commission, by permitting installation of two taps requested by Tennessee without further conditions or delay. Tennessee also requested the Commission to declare that Columbia Gulf is violating the Commission's orders by refusing to allow Tennessee to install two taps for the interconnection at Egan, Louisiana. Columbia Gulf answered, arguing that the Commission's orders did not resolve the question of who will operate the receipt point and that Tennessee must sign a new interconnection agreement before construction of the facility.⁶

4. The Commission issued a declaratory order on July 20, 2006.⁷ The order directed Columbia Gulf to permit installation of the taps requested by Tennessee. In addition, in order to determine whether Columbia Gulf's actions have violated and/or are continuing to violate our orders, we referred the matter to the Commission's Office of Enforcement for investigation under 18 C.F.R. §1b.5. Columbia Gulf has requested clarification and rehearing of the July 20 Order, and Tennessee has filed an answer to Columbia Gulf's request for clarification. No further clarification is necessary and the Commission will deny rehearing.

Background

5. The evidence introduced by the parties at hearing is summarized fully in the Initial Decision⁸ and the July 25 Order.⁹ Briefly, Columbia Gulf and Tennessee jointly operate a horse-shoe shaped natural gas system, the Blue Water Project (BWP), which is located

⁴ *Tennessee Gas Pipeline Company*, 113 FERC ¶ 61, 200 (2005) (November 22 Order).

⁵ The petition was docketed as Docket No. RP06-297-000.

⁶ Answer and Motion To Intervene of Columbia Gulf (April 28, 2006) at 15, *et seq.*

⁷ *Tennessee Gas Pipeline Company v. Columbia Gulf Transmission Company*, 116 FERC ¶ 61,065 (July 20 Order) (2006).

⁸ *See* 110 FERC at P 8-9 (2005).

⁹ *See* 112 FERC at P 3-11 (2005).

primarily in offshore Louisiana Gulf waters, pursuant to a contract signed in 1972, the BWP Operating Agreement (Operating Agreement), which governs the joint operation. The BWP includes the Western Shore Line (WSL), which terminates at Egan, Louisiana, the Blue Water Offshore Header (Offshore Header), and the Eastern Shore Line (ESL), which terminates at Cocodrie, Louisiana.

6. The Egan Complex at the Egan, Louisiana terminus of the WSL is operated by Columbia Gulf and consists of four meter stations, each station serving as a delivery point into a different interstate pipeline. Producers who wish to take their supply to Egan are able to reach downstream markets on each of these four pipelines. Egan A is the delivery point into Columbia Gulf. Egan B is the delivery point into Tennessee.¹⁰

7. Processing of gas transported on the WSL is performed at the non-jurisdictional Blue Water Gas Plant (BWGP), located onshore on the WSL, and operated by one of its owners, ExxonMobil Gas and Power Marketing Company. In recent years gas volumes transported on the WSL have declined. Tennessee has also experienced constraints on its 100 and 800 Lines, which flow north from the western portion of the BWP. Tennessee therefore seeks to shift volumes through the Egan Interconnection from its constrained western 100 and 800 Lines to its eastern 500 Line. The gas to be delivered by Tennessee will come from onshore sources.

Interconnection Policy Litigation

8. At the inception of this proceeding, the Commission directed the ALJ to review Tennessee's request for a new receipt point at Egan pursuant to the Commission's pipeline interconnection policy, as set forth in *Panhandle*.¹¹ That policy "enables a party desiring access to a pipeline to obtain an interconnection if it satisfies five conditions."¹² The five conditions require that: (1) the party seeking the interconnection bear the cost of construction of the interconnection; (2) the proposed interconnection not adversely affect the pipeline's operations; (3) the proposed interconnection and resulting transportation not result in diminished service to the pipeline's existing customers; (4) the proposed interconnection not cause the pipeline to be in violation of any applicable environmental or safety laws or regulations with respect to the facilities required to establish an interconnection with the pipeline's facilities; and (5) the proposed interconnection must not cause the pipeline to be in violation of its right-of-way agreements or any contractual

¹⁰ See Ex. No. CGT-1 at 12. Egan C is the delivery point into Transcontinental Gas Pipeline Corporation. Egan D is the delivery point into Texas Gas Transmission, L.P.

¹¹ *Panhandle Eastern Pipe Line Company (Panhandle)*, 91 FERC ¶ 61,037 (2000).

¹² *Panhandle*, 91 FERC ¶ 61,037 at 61,141 (2000).

obligations with respect to the interconnection facilities.¹³ The ALJ found that application of the *Panhandle* policy requires that Tennessee's request be granted by Columbia Gulf. The Commission has twice affirmed the ALJ.¹⁴

July 20 Order

9. The July 20 Declaratory Order reviewed the July 25 and November 22 Orders, concluding that those orders required Columbia Gulf to allow the interconnection as requested by Tennessee, and that Columbia Gulf has attempted to introduce new evidence and to re-litigate certain settled issues. Both the November 22 Order and the July 20 Order noted that Tennessee planned to construct and operate an interconnection outside of the Egan Complex. Ordering Paragraph A of the July 25 Order directs Columbia Gulf to allow the construction and operation of the receipt meter requested at Egan, Louisiana, by Tennessee "as soon as operationally possible."¹⁵ Since the requested interconnection had not been built, the Commission ordered Columbia Gulf to permit the taps as requested by Tennessee, with attendant reporting responsibilities, and referred to its Office of Enforcement the issue of whether Columbia Gulf's actions have violated or are violating the Commission's prior orders.

Rehearing/Clarification Issues

10. Columbia Gulf states that it has expended substantial effort to comply with the Commission's orders. Columbia Gulf also submits several specifications of error, and states that the Commission should find that (1) the issue of operational control was not litigated in Docket No. RP04-215 or resolved in the Initial and Rehearing Orders; (2) that Columbia Gulf should operate the new interconnection; and (3) the Operating Agreement does not preclude Columbia Gulf from requiring execution by Tennessee of an interconnection agreement providing operational control of that interconnection to Columbia Gulf. The Commission denies rehearing on the issues raised.

¹³ The policy has been raised in a limited number of cases, including the following: *ANR Pipeline Co. v. Transcontinental Gas Pipeline Company*, 91 FERC ¶ 61,066, *reh'g denied*, 93 FERC ¶ 61,277 (2000); *Cove Point LNG Limited Partnership*, 97 FERC ¶ 61,043 (2001); *Nornew Energy Supply, Inc. and Norse Pipeline L.L.C.*, 98 FERC ¶ 61,018 (2002); *Discovery Gas Transmission LLC*, 107 FERC ¶ 61,124 (2004); *AES Ocean Express LLC v. Florida Gas Transmission Co.*, 107 FERC ¶ 61,276 (2004).

¹⁴ July 25 Order, 112 FERC ¶ 61,118 (2005); November 22 Order, 113 FERC ¶ 61,200 (2005).

¹⁵ 112 FERC ¶ 61,118 at p. 61,741 (2005).

A. New Interconnection Agreement

11. Columbia Gulf claims that the Commission's conclusion that Columbia Gulf cannot require Tennessee to execute an interconnection agreement is arbitrary, capricious, not the product of reasoned decision making, and not supported by substantial evidence.¹⁶ Columbia Gulf states that even under *Panhandle*, Columbia Gulf can require Tennessee to execute an interconnection agreement,¹⁷ because the Operating Agreement designates Columbia Gulf as operator of the Egan Complex and the WSL.

12. Columbia Gulf states further that the Commission has improperly ignored the affidavits of Columbia Gulf's Mr. Hart and Mr. Crews submitted with Columbia Gulf's Answer to Tennessee's Petition for Declaratory Order.¹⁸ Such evidence, states Columbia Gulf, shows the reasonableness of its policy that requires Tennessee to execute a separate interconnection agreement, because 1) Tennessee's proposed interconnect is different from all the prior BWP interconnections that did not require an interconnection agreement, and 2) the general industry practice is purportedly to allow the receiving pipeline to operate an interconnect with a second pipeline.

Discussion

13. Columbia Gulf misconstrues both the Commission's Declaratory Order and the Commission's interconnection policy articulated in *Panhandle*. The July 20 Declaratory Order did not re-open the RP04-215 proceeding for the submission by Columbia Gulf of new evidence in support of its rejected arguments regarding issues settled in that proceeding. Columbia Gulf's arguments throughout its Request for Clarification and Rehearing constitute collateral attacks on the July 25 and November 22 Orders, both final

¹⁶ Citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Ins. Co.*, 463 U.S. 29 (1983); *Pacific Gas & Elec. Co. v. FERC*, 373 F.3d 1315 (D.C. Cir. 2004); *City of Centralia, Washington v. FERC*, 213 F.3d 742 (D.C. Cir. 2000).

¹⁷ Citing *Transcontinental Gas Pipeline Corp.*, 95 FERC ¶ 61,245 (2001).

¹⁸ Columbia Gulf states that the Commission failed to engage in reasoned decision making when it effectively ignored Columbia Gulf's operational concerns regarding Tennessee's proposal to be the operator of the new interconnection. Citing *Tesoro Alaska Petroleum Co. v. FERC*, 234 F.3d 1286 (D.C. Cir. 2000); *City of Vernon v. FERC*, 845 F.2d 1042 (D.C. Cir. 1988).

Commission orders.¹⁹ Further, in *Panhandle*, the Commission described its modification of its then-current interconnection policy as ensuring that:

open access pipelines do not impose artificial restrictions on those who seek access to their pipeline systems. When the requesting party assumes the financial burden of the interconnection, the Commission finds no reason to second-guess its analysis. Under such circumstances, when pipelines are able to accommodate the interconnections, subject to the interconnection policy, the pipelines *may not deny such requests* (emphasis supplied).²⁰

14. As discussed further below, Columbia Gulf argued before both the ALJ and the Commission that granting Tennessee's request would cause the loss of operational control and thus not be consistent with *Panhandle*, but did not submit the evidence it now claims to be relevant. The stated purpose of the second standard of the *Panhandle* analysis is to assure that the requested interconnection will not adversely affect the pipeline's operation. The ALJ, and the Commission, considered closely and rejected Columbia Gulf's arguments that it would suffer adverse system effects, including loss of operational control, from granting Tennessee's request.

15. Columbia Gulf did not claim at hearing that the adverse impact of Tennessee's proposal would flow only from Tennessee's operation of the new interconnection and that Tennessee thus should be required to sign an interconnection agreement providing operational control to Columbia Gulf. Rather, Columbia Gulf argued that the record evidence showed adverse effects on its system would result directly from the nature of Tennessee's request -- a functioning interconnection through which sometimes large volumes of gas may flow. Columbia Gulf argued that the interconnection would cause reduced volumes on the BWP, the closing of the processing plant, shut-in production, and liquids build-up in its facilities.

16. Both the ALJ and the Commission found such claims to be unduly speculative.²¹ The Commission reviewed the evidence in the November 22 rehearing order and found

¹⁹ See, e.g., *State of California, ex rel. Bill Lockyer, Attorney General of the State of California (complainant) v. British Columbia Power Exchange Corps., et al.*, 99 FERC ¶ 61,247, *reh'g denied*, 100 FERC ¶ 61,295 (2002). See also *Pacific Gas and Electric Company, et al., v. FERC, et al.*, ---F3d---, No. 0471613, United States Court of Appeals for the Ninth Circuit (September 18, 2006) (*PG&E v. FERC*).

²⁰ *Panhandle*, 91 FERC at 61,142 (2000).

²¹ See Initial Decision, 110 FERC ¶ 63,041 at P 32-41 (2005); July 25 Order, 112 FERC ¶ 61,118 at P 40-47 (2005).

that no *Panhandle* showing had been made of adverse impact, including the loss of control asserted by Columbia Gulf, as a result of the interconnect Tennessee requested.²² The Commission required Columbia Gulf to provide and/or allow the interconnection requested by Tennessee and to which it remains entitled.²³

17. As a practical matter, Columbia Gulf provides no good reason why its newly proposed evidence would now substantiate its claims of adverse impact. Columbia Gulf claims it “may be required” to install redundant metering and flow control facilities in order to assure system reliability.²⁴ Columbia Gulf simply assumes that other provisions of the Operating Agreement and of Columbia Gulf’s tariff will not adequately protect its system’s operations, despite the various safeguards provided by the Operating Agreement and its tariff reasonably relied upon by both parties to regulate pressures and volumes, as discussed in the July 20 Order.²⁵ The record before us includes only speculation as to whether Tennessee’s operation of the requested interconnection will have any effects upon Columbia Gulf’s system operations differing from those resulting from Columbia Gulf’s own operation. We reiterate that Columbia Gulf’s tariff provisions on pipeline operations, as they are applicable to service provided by Columbia Gulf through the WSL facilities, protect against adverse operating effects. This is the purpose of having such tariff provisions.²⁶

18. Columbia Gulf attempts to construe our orders issued here under *Panhandle* as requiring only the construction of an interconnection, with no assurance that such interconnection will ever be operational. Such a tortured reading is inconsistent with all of the orders issued by the Commission regarding this matter, and constitutes an impermissible collateral attack on the Docket No. RP04-215 orders. The ALJ, Commission Staff, and the Commission have expended substantial resources performing

²² Indeed, the size of the receipt meter was enlarged to the level of 400,000 MMcf/day in the hearing at Staff’s suggestion and with Columbia Gulf’s support to assure appropriate operation of the proposed interconnection regarding Columbia Gulf’s service to its customers. *See* Initial Decision, 110 FERC ¶ 63,041 at P 30-31 (2005).

²³ No stay of the Commission’s orders has been issued.

²⁴ Request for Clarification and Rehearing at 22, n.46.

²⁵ *See* July 20 Order at P 24-27 (2006).

²⁶ Should Columbia Gulf discover that its tariff provisions are not adequate to address the impact of the new interconnection, Columbia Gulf can file changes to its tariff. Such changes can then be evaluated in light of actual operational experience.

the required *Panhandle* analysis, which of course assumes a functioning interconnection. The Commission expects Columbia Gulf to permit the new interconnection consistent with the July 20 Order.

B. Legal Authority

19. Columbia Gulf repeats an argument, made and rejected throughout the RP04-215 proceedings, that the Commission lacks the authority to award the remedy requested by Tennessee.²⁷ Columbia Gulf cites again the cases analyzed by the Commission in detail in its orders on review of the Initial Decision.

Discussion

20. The issue of Commission authority to order interconnections was briefed on exceptions to the ALJ's decision and was discussed fully in the Commission's two orders reviewing the hearing proceedings.²⁸ Columbia Gulf presents here a truncated version of its earlier arguments but fails to address the Commission's analysis in the July 25 and November 22 Orders. Those orders continue to support our conclusion that the Commission has authority to require interconnections both as a general matter and to order the specific interconnection requested by Tennessee.

C. July 20 Order and the November 22 Order Clarification

21. Columbia Gulf had requested clarification, in the course of its request for rehearing of the July 25 Order, of Ordering Paragraph A of that order requiring Columbia Gulf "to allow the construction and operation of the receipt meter" requested by Tennessee. Columbia Gulf submitted that the Operating Agreement provides that Columbia Gulf operates the Egan Complex and requested clarification that no change in the Operating Agreement was being effected by the July 25 Order. The November 22 Order clarified that the Operating Agreement was not modified by the Commission's orders. The July 20 Order affirmed the propriety of the Commission's clarification in the November 22 Order.

²⁷ Request for Clarification and Rehearing at 23. *Citing Panhandle Eastern Pipe Line Co. v. FPC*, 204 F.2d 675 (3rd Cir. 1953); *Kern River Gas Trans. Co.*, 100 FERC ¶ 61,056 (2002); *El Paso Natural Gas Co.*, 96 FERC ¶ 61,343 (2001).

²⁸ See November 22 Order, 113 FERC at P 22-30 (2005).

22. Columbia Gulf claims here that the Commission erred in the July 20 Order by stating that Columbia Gulf presented only the *Mobile-Sierra*²⁹ concern in its request for clarification considered by the Commission in the November 22 Order. Columbia Gulf states that its one-paragraph request for clarification “does not mention the *Mobile-Sierra* doctrine.”³⁰ Columbia Gulf states that the Rehearing Order was unresponsive to the real intention of clarification request, which was directed at whether Columbia Gulf would operate the Egan B meter.³¹

23. Columbia Gulf states further that operational control was not listed as a contested issue for hearing and was not addressed on brief by the parties. Columbia Gulf argues that new evidence (company policy, difference in size of the requested interconnection from those operated by Tennessee elsewhere on the BWP, and general industry practice) justifies requiring Tennessee to execute an interconnection agreement that provides Columbia Gulf with operational control of the new interconnection. Columbia Gulf claims that the need for system reliability requires that it be accorded direct operational control over the interconnection.

Discussion

24. Columbia Gulf claims that operational control was not addressed in the litigation at hearing or settled by the *Panhandle* analysis conducted by the parties. To the contrary, addressing the question of whether the second standard of the *Panhandle* analysis was met by the evidence submitted,³² Columbia Gulf raised the issue of operational control before the ALJ directly in the context of its efforts to exercise rights under the Operating Agreement to manage the problem of imbalances on its system, and reasserted its argument in subsequent filings with the Commission. Columbia Gulf stated consistently

²⁹ See *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332, 345 (1956) (Mobile) and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348, 355 (1956) (Sierra).

³⁰ Request for Clarification and Rehearing at 18.

³¹ Columbia Gulf states that the Commission’s conclusion, that the issue of operational control of the proposed interconnection was litigated in Docket No. RP04-215, is arbitrary, capricious, not the product of reasoned decision making, and not supported by substantial evidence. *Citing Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Ins. Co.*, 463 U.S. 29 (1983); *Pacific Gas & Elec. Co. v. FERC*, 373 F.3d 1315 (D.C. Cir. 2004); *City of Centralia, Washington v. FERC*, 213 F.3d 742 (D.C. Cir. 2000).

³² The proposed interconnection will not “adversely affect the pipeline’s operations.” *See Panhandle*, 91 FERC ¶ 61,037 at 61,141 (2000).

that if “Tennessee’s proposal is implemented, Columbia Gulf will have no operational control over the WSL. Tennessee will be the only party that can manage system imbalances.”³³ The Commission carefully reviewed evidence introduced by Columbia Gulf claiming that Tennessee’s interconnection will significantly change the operation of the BWP and BWGP.³⁴

25. In light of the parties’ past practice of allowing each other the opportunity to control facilities upstream of interconnection, any evidence concerning the adverse impact of loss of operational control would have been relevant. Columbia Gulf notes that it elicited, on cross-examination of Tennessee witness Mr. Goodman, the information that Tennessee was considering locating its receipt facilities outside of Columbia Gulf’s control of the Egan Complex.³⁵ However, Columbia Gulf sought no further information concerning operation of such facilities and submitted at hearing none of the evidence it now claims is relevant to this issue. It is reasonable to conclude that Columbia Gulf litigated and pursued the issue to the extent of its interest and concern.

26. Further, Columbia Gulf is in error about the language of its request for clarification as addressed by the Commission in the November 22 Order. In that request, Columbia Gulf stated specifically that a modification of the Operating Agreement regarding operational control of the Egan Complex would be a “violation of *Mobile-Sierra*.”³⁶ That was the sole explanation offered regarding the question of operational authority at Egan B within the Egan Complex that Columbia Gulf brought to the attention of the Commission. No other reasons were given why operational control over Egan B was of particular concern. In response, the Commission clarified once again that no change to the terms of the Operating Agreement was being effectuated by the Commission’s orders.

³³ See Columbia Gulf’s Brief on Exceptions at 52; the same argument is repeated in Columbia Gulf’s request for rehearing of the July 25 Order. See Columbia Gulf’s Request for Clarification, Rehearing and Stay, at 52.

³⁴ 113 FERC ¶ 61,200 at P 37-39.

³⁵ Request for Clarification and Rehearing at 6, n.15; see also July 20 Order at P 28, n.34 (2006).

³⁶ Request for Clarification, Rehearing and Stay of Columbia Gulf (August 18, 2005) 15, n.25. The July 20 Order cited this specific portion of Columbia Gulf’s document, 116 FERC at P33, n.41, but Columbia Gulf asserts nonetheless that the request for clarification had nothing to do with and did not mention *Mobile-Sierra*. Request for Clarification, Rehearing and Stay at 18.

27. Given the limited nature of what Columbia Gulf presented for clarification, the Commission's resolution was responsive. When the November 22 Order was issued, the Commission also had before it Tennessee's notification, provided to Columbia Gulf in August 2005, that it had decided to forego constructing a receipt point within Columbia Gulf's Egan Complex and had elected rather to construct and operate the receipt point "at Egan, Louisiana at the location of its choosing: on its own property located outside of the Egan B Complex operated by Columbia Gulf."³⁷

28. On November 22, 2005, however, Columbia Gulf's request for clarification still directed the Commission's attention to the issue of operational control at the Egan B meter within the Egan Complex, despite Tennessee's August 2005 decision to construct and operate the receipt meter outside the Egan Complex. Indeed, the November 22 Order noted specifically Tennessee's statement that the receipt point would be installed outside the Egan Complex in order to decrease the likelihood of delay in the receipt point's installation/operation.³⁸ Given that Columbia Gulf made no attempt to show any significance to the matter to be clarified beyond the re-asserted *Mobile-Sierra* implications, which were found yet again non-existent, the Commission's response was understandably brief. The Commission made clear that no change to the Operating Agreement had been made,³⁹ and that the receipt point outside the Egan Complex, the remedy ultimately sought by Tennessee, had been approved by the July 25 Order.⁴⁰ The July 20 Order correctly stated the presentation and resolution of this issue,⁴¹ and Columbia Gulf's attempt at a collateral attack on the Commission's orders will be rejected.

D. July 20 Order and Operational Control

29. Columbia Gulf states that the July 20 Order incorrectly construed the July 25 and November 22 Orders as authorizing Tennessee to construct and to operate the new

³⁷ Answer of Tennessee Gas Pipeline Company To request for Clarification and Stay of Columbia Gulf Transmission Company (September 2, 2005) at 10.

³⁸ 113 FERC at P 53 (2005).

³⁹ *Id.*, at P 54.

⁴⁰ "The Commission confirms that the July 25 Order, which construes the Operating Agreement as allowing the remedy sought by Tennessee, made no modifications to the Operating Agreement." 113 FERC at P. 54 (2005).

⁴¹ 116 FERC at P 31-34 (2006).

interconnection.⁴² Columbia Gulf argues that Tennessee did not announce its decision to construct and operate a receipt point outside the Egan Complex until after the issuance of the July 25 Order, and thus that the July 25 Order could not have directed Columbia Gulf to allow Tennessee to construct and operate the requested interconnection.

Discussion

30. The July 25 Order directed Columbia Gulf “to allow the construction and operation of the receipt point requested at Egan, Louisiana, by Tennessee as soon as operationally possible.”⁴³ As noted above, the November 22 Order reflected Tennessee’s decision to construct its facilities outside of the Egan Complex. That made no difference in the outcome because it was one of the three Egan, Louisiana potential alternative sites being considered by Tennessee at hearing. Each site was consistent with the terms of the Operating Agreement and the manner in which the parties have implemented the Operating Agreement. The fact that Tennessee concluded its review of the three alternatives after the hearing concluded is unremarkable, as is the fact that Tennessee apparently continued to consider a receipt point inside the Egan Complex shortly before making its final decision.⁴⁴ The timing of Tennessee’s notification in August 2005 of its selection of the option outside the Egan Complex has been neither argued nor shown to be precluded by any provision of the Operating Agreement or any historical practice of the parties.

31. Columbia Gulf implies, without identifying any reasonably supportive evidence, that operational control of an interconnection has been treated by these two parties as automatically within the province of the pipeline on whose facilities the interconnection is placed. To the contrary, the parties have allowed each other to assume control over their interconnections when outside the other’s areas of responsibility as designated by the Operating Agreement. For example, Tennessee notes that, in every case, “Tennessee has operated its facilities upstream of taps located on the portion of the BWP operated by

⁴² Columbia Gulf claims that conclusion is arbitrary, capricious, not the product of reasoned decision making, and not supported by substantial evidence. *Citing State Farm, supra; Pacific Gas & Elec. Co., supra; City of Centralia, supra.*

⁴³ 112 FERC at 61,741 (2005).

⁴⁴ Request for Clarification and Rehearing at 19.

Columbia Gulf. Likewise, Columbia Gulf has operated its facilities upstream of the remaining portions of the BWP operated by Tennessee.”⁴⁵ Columbia Gulf accedes to that factual assertion,⁴⁶ while attempting now to distinguish the requested interconnection because of size, company policy, and claims of a general industry practice. Each of these arguments could have been made at hearing and to the Commission, if necessary, on review of the Initial Decision or on rehearing of the July 25 Order.⁴⁷

32. As noted in the July 20 Order, Columbia Gulf has been directed to allow Tennessee’s request to construct and operate its receipt point outside the Egan Complex, in accordance with the Operating Agreement “as construed and implemented since 1972 by the parties.”⁴⁸ Indeed, the ALJ had noted specifically that section 3 of the Operating Agreement states that Tennessee and Columbia Gulf “will coordinate the operation of their respective facilities and the jointly-owned facilities all of which constitute the BWP, so as to maximize the efficiencies and flexibility obtainable from such coordination of operations” in the transportation of gas.⁴⁹ That is what was shown at hearing to be the goal of the parties’ practices regarding BWP receipt points, and Columbia Gulf presents no good reason to construe the Docket No. RP04-215 record and Commission orders any differently.

33. Columbia Gulf also states that the Commission ignores, by referring to the Office of Enforcement the issue of possible violations of the RP04-215 orders, the efforts of Columbia Gulf to comply with those Orders. To the contrary, the Commission only directed Columbia Gulf to allow the construction and operation of the interconnection requested by Tennessee. The issue of whether Columbia Gulf attempted to do so or whether Columbia Gulf’s actions violated the Commission’s orders is a separate matter as to which we have made no determination at this point. Columbia Gulf should address these arguments to the Office of Enforcement in its response to the investigation the Commission has directed.

⁴⁵ Petition for Declaratory Order at 14.

⁴⁶ Answer and Motion to Intervene of Columbia Gulf (April 28, 2006) at 9 (“In the past, when production has connected to the WSL, Tennessee has operated its facilities upstream of taps located on the portion of the BWP operated by Columbia Gulf.”).

⁴⁷ Evidence adduced at hearing showed that other BWP receipt points have been established by consent of both parties. November 22 Order at P 46.

⁴⁸ July 20 Order at P 35 (2006).

⁴⁹ *Id.*, at P51, 52, and 54 (2005).

34. On September 18, 2006, Tennessee filed an Answer to Columbia Gulf's Request for Clarification, arguing that Columbia Gulf's statement, that it reserves the right to build redundant facilities near the new interconnection, is an indication that Columbia Gulf intends to interfere with Tennessee's operation of a new interconnection. Tennessee also requests that the Commission accept its filing as an answer to Columbia Gulf's rehearing request.⁵⁰ Tennessee requests that the Commission make clear that Columbia Gulf may not interfere with operation of the new interconnection and that if Columbia Gulf does construct such facilities, Tennessee will not be responsible to pay for them. The Commission considers these issues hypothetical and finds no good reason to accept Tennessee's answer to the request for rehearing. As we have noted, both the Operating Agreement and Columbia Gulf's tariff provide guidance on the operation of BWP, and we expect that these tools will permit Columbia Gulf to manage its system operations in light of the flows of gas by Tennessee through the new interconnection.

35. Finally, we note that Columbia Gulf states that "it is allowing the interconnection ordered by the Commission and will do so regardless of the Commission's final determination regarding an interconnection agreement."⁵¹ We expect nothing less. We will not entertain further attempts by Columbia Gulf to revisit the Commission's decision. We reserve the right to issue further orders as appropriate depending on the result of our referral to the Office of Enforcement.

The Commission orders:

Columbia Gulf's requests for rehearing and clarification are denied, as discussed in the body of this order. Columbia Gulf is again directed to comply with ordering paragraph (A) of the July 20 Order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁵⁰ See Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2006). Answers to rehearing applications are not permitted, under Rule 213(a)(2).

⁵¹ Request for Clarification and Rehearing of Columbia Gulf at 25, n. 56. By correspondence filed October 3, 2006, Columbia Gulf reports that the construction of the taps was completed September 27, 2006. Tennessee filed a letter October 2, 2006, stating that the new interconnection became operational October 1, 2006.